

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC CAUSE NO. E041 OF 2025

LUCY KAGWIRIA.....CLAIMANT

VERSUS

KENYA REINSURANCE CORPORATION LIMITED.....
RESPONDENT

RULING

1. Before this Court for determination is the Respondent’s Notice of Preliminary Objection dated 23rd September 2025. The Objection is premised on the assertion that the Court lacks jurisdiction under Section 89 of the Employment Act. The Respondent further contends that the reliefs sought by the Claimant in the Statement of Claim are statute-barred, as the alleged cause of action arose between 8th January 2014 and 1st May 2023, during the period when the Claimant was seconded to the West Africa office in Abidjan, Côte d’Ivoire.

Submissions

2. The Preliminary Objection was canvassed by way of written submissions. The Court has given due consideration to the written submissions by both parties.

Analysis and Determination

3. The crux of the Respondent's Objection is that the present claim contravenes Section 89 of the Employment Act and is therefore statute-barred.

4. While both parties agree that the claims advanced by the Claimant in the Statement of Claim relate to continuing injuries, they differ on whether the injuries have ceased or are ongoing. On its part, the Respondent contends that the cause of action arose when the Claimant was recalled from secondment on 1st May 2023, and that the claims became time-barred on 1st May 2024, following the cessation of the injury. On the other hand, the Claimant argues that the continuing injuries persist and can only be regarded as concluded upon the termination of her employment.

5. In her Statement of Claim, the Claimant avers that she was employed by the Respondent from 7th December 1987 and, by a letter dated 8th January 2014, was seconded to the West African office in Abidjan, Côte d'Ivoire. She contends that the Respondent, without any justifiable reason, failed to honor several terms and conditions set out in the letter of secondment. She further avers that the Respondent did not pay her bonuses for six years, specifically,

2016, 2018, 2019, 2020, 2021, and 2022 and reduced her gross salary between 2018 and 2020.

6. On this basis, the Claimant seeks payment for a 30% salary reduction dating back to 2014, annual increments on her gross salary since 2015, salary deductions following her confirmation to a managerial position, car and foreign allowances, acting Regional Manager's allowances for June 2020, October 2020, and December 2021, Administrator General salary for two years, as well as telephone allowances, per diem allowances, and bonuses.
7. A continuing injury is one that does not arise from a single, isolated act or breach, but instead represents an ongoing violation that persists over time, for example, the continuous underpayment of an employee's salary, where each pay cycle amounts to a fresh breach.
8. According to **Black's Law Dictionary (9th Edition p.856)**, a continuing injury is defined as: ***"An injury that is still in the process of being committed."***
9. In addressing the concept of a continuing injury, the Court of Appeal in **The German School Society & another v Ohany & another [2023] KECA 894 (KLR)** held as follows:

“The principles underlying continuing wrongs and recurring/successive wrongs have been applied in employment disputes. A ‘continuing wrong’ refers to a single wrongful act that results in a continuing injury, while ‘recurring or successive wrongs’ are those that occur periodically, with each instance giving rise to a distinct and separate cause of action.”

10. It is evident that the Claimant’s claims concerning salary reductions, annual increments, acting allowance, car allowance, foreign allowance, and telephone allowance relate to the period of her secondment in Abidjan. Accordingly, each time the Claimant received a reduced salary or was not paid an allowance to which she alleges she was contractually entitled, a fresh cause of action arose.

11. Since the payments claimed by the Claimant were linked to her secondment in Côte d’Ivoire, it follows that the continuing injury ceased when her secondment ended on 1st May 2023, which is when the salary reductions and her entitlement to the allowances came to an end.

12. **Section 89 of the Employment Act** sets out the limitation period for employment claims, including those arising from continuing injuries, as follows:

“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained of, or in the case of a continuing injury or damage, within twelve months next after the cessation thereof.” (Emphasis added)

13. In essence, the Employment Act provides a twelve-month limitation period for claims arising from a continuing injury, calculated from the date the injury ceases, which is when the breach or wrongful act comes to an end.

14. Accordingly, any claim based on a continuing injury must be filed within twelve months from the date the alleged breach or injury terminates.

15. In **G4S Security Services (K) Limited v Joseph Kamau & 468 others [2018] eKLR**, the Court of Appeal interpreted the import of Section 89 in relation to continuing injuries and stated as follows:

“Regarding a ‘continuing injury’, the proviso to Section 90 of the Employment Act requires that the claim be made within twelve months next after the cessation thereof. Further, upon the claimant’s dismissal,

any claim based on a continuing injury ought to have been filed within one year, failing which it became time-barred.”

16. Applying the provisions of Section 89 of the Employment Act to the present case, it follows that the Claimant had until 1st May 2024 to file a claim regarding the alleged salary reductions and unpaid allowances.

17. However, the present suit was filed on 24th January 2025, which is after the expiration of the prescribed limitation period for claims arising from a continuing injury. Accordingly, the Claimant's claims with respect to the alleged salary reductions and unpaid allowances while she was on secondment in Abidjan were statute-barred at the time of filing hence are unsustainable by dint of Section 89 of the Employment Act.

18. The Claimant further alleges that the Respondent failed to review her remuneration upon her appointment as Administrator General on 5th July 2021 for a period of two years. It is this Court's respectful view that this claim does not constitute a continuing injury, as the Respondent's alleged failure to review the Claimant's salary occurred at a specific point in time when the review was allegedly due.

19. Similarly, the Claim regarding bonus payments does not constitute a continuing injury, as each bonus accrued separately. Each year's non-payment represented a distinct breach, giving rise to a separate cause of action for that particular year. The alleged successive failures by the Respondent to pay bonuses for each year constitute separate and severable breaches, rather than a single continuing injury.

20. Equally, the Court finds that the claim for unpaid per diem in 2022 represents a single breach, arising on the date it allegedly became due but was not paid. That date marks the moment the cause of action arose.

21. As the Court has determined that the claims regarding salary review, bonuses, and per diem constitute single breaches, the standard three-year limitation period under Section 89 of the Employment Act is applicable.

22. Accordingly, only the portion of the salary review that falls within the three-year limitation period from the date it accrued on 5th July 2021 is actionable. Any claims falling outside the three-year period (from 5th July 2021 to 23rd January 2022), preceding the filing of the suit, are time-barred under Section 89 of the Employment Act.

23.The same principle applies to bonus payments. Accordingly, bonuses for 2016, 2018, 2019, 2020, and 2021 are not actionable, as they fall outside the three-year limitation period from the date the claim was filed.

24.Likewise, the claim for the per diem allowance, allegedly unpaid in 2022, is not time-barred under Section 89 of the Employment Act, as it falls within the three-year period preceding the filing of the suit.

25.In sum, the Preliminary Objection dated 23rd September 2025 is upheld in respect of the claims for salary reductions, annual increments, car allowance, foreign allowance, telephone allowance, acting allowances (for 1st and 2nd Regional Manager), and bonuses for the years 2016, 2018, 2019, 2020, and 2021. Conversely, the Preliminary Objection is overruled in respect of the claim for unpaid per diem, the salary review for the Administrator General from 24th January 2022 to 1st May 2023, and the bonus for 2022.

26.Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 11th day of December 2025.

.....

STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Ms. Kathambi

For the Respondent Ms. Okoth

Court Assistant Mohammed

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective

which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

ORIGINAL